

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

1991 CHEVROLET CAMARO,

Defendant,

and

TAMMY KINGSBURY,

Claimant-Appellant.

UNPUBLISHED

August 7, 1998

No. 201854

Allegan Circuit Court

LC No. 95-018182 CZ

Before: MacKenzie, P.J., and Whitbeck and G.S. Allen, Jr.*, JJ.

PER CURIAM.

Following a bench trial, the lower court ordered defendant 1991 Chevrolet Camaro forfeited to plaintiff under MCL333.7521; MSA 14.15(7521), as the result of it being used in an illegal drug transaction. Claimant Tammy Kingsbury now appeals as of right. We reverse and remand for proceedings consistent with this opinion.

Claimant first argues the trial court erred by denying her motion for summary disposition. We agree. Claimant filed an affidavit in support of her MCR 2.116 (C)(10) motion, within which she detailed her alleged status as an innocent owner¹. In his response, the prosecutor failed to produce “clear and decisive evidence” negating claimant’s affirmative defense. *In re Forfeiture of \$234,200*, 217 Mich App 320, 329-330; 551 NW2d 444 (1996). In fact, the prosecutor failed to provide an affidavit or any documentary evidence to refute claimant’s assertion of the innocent owner defense. Accordingly, the trial court erred by denying claimant’s (C)(10) motion; summary disposition should have been granted in her favor. MCR 2.116(G)(4); *In re Forfeiture of \$234,200, supra*.

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

Claimant next argues that the car was held by her and her husband, John Kingsbury, as tenants by the entireties and that she was entitled to use of the vehicle until she voluntarily transferred its ownership. This argument is without merit. First, we note that claimant has failed to cite any authority for the proposition that the real property concept of tenancy by the entireties applies to personal property. An appellate court will not search for authority to support a party's position. *Weiss v Hodge (After Remand)*, 223 Mich App 620, 637; 567 NW2d 468 (1997). Notwithstanding claimant's waiver of this issue, we find that, personal property, like a car, is not the proper subject of the entireties form of ownership. Rather, claimant and John Kingsbury are merely joint owners under the Michigan Vehicle Code, MCL 257.201, *et seq*; MSA 9.1901, *et seq*. Accordingly, the forfeited vehicle should be sold and the proceeds from same divided equally between the state and claimant. See *In re Forfeiture of \$53*, 178 Mich App 480, 496; 444 NW2d 182 (1989).

Given our conclusion that summary disposition should have been granted in favor of claimant, it is unnecessary to address the remaining issues on appeal.

Reversed and remanded for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Barbara B. MacKenzie

/s/ William C. Whitbeck

/s/ Glenn S. Allen, Jr.

¹ Property is not subject to forfeiture under the Controlled Substances Act if the owner can establish that it was used without his or her knowledge or consent. MCL 333.7521(1)(d)(ii) and (f); MSA 14.15(7521)(1)(d)(ii) and (f).